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LIABILITY OF REA COOPERATIVE FOR INDUCTIVE INTERFERENCE WITH TELEPHONE SERVICE

The owner of a telephone exchange and connecting ground-return lines sued for $500 damages for inductive interference from REA-financed lines subsequently located on or along-side the public highways occupied by the plaintiff's lines. The case was tried by the Court on an agreed statement of facts showing in substance that the defendant had not been negligent and that the interference complained of could be practically eliminated by making the telephone system a two-wire metallic one. Judgment was rendered in favor of the plaintiff and the defendant appealed. Held: The plaintiff failed to establish a cause of action and the judgment was erroneous. Tri-County Electric Membership Corporation v. Meador, 138 S.W. (2d) 993 (Ct. of App. of Ky., March 19, 1940). In the course of its opinion the Court said that the factor which determines liability of a subsequent occupant of a public highway to a prior occupant is the failure to exercise reasonable care not to disturb the use of the latter, whether by faulty equipment or instrumentalities, or by merely doing something reasonably avoidable and unnecessary.

On June 3 the Supreme Court of Mississippi handed down a decision, in the case of Jones County Electric Power Association v. Eli Robinson, similar to that of the Kentucky Court of Appeals. The owner of a ground-return telephone system sued for $1,000 damages for inductive interference with telephone service furnished by him, allegedly due to the negligence of the defendant, and in the trial court recovered a judgment for $800. The Supreme Court reversed the case on the ground that the defendant was entitled to a directed verdict, having used approved modern instrumentalities and methods in the construction and operation of its lines, and the plaintiff being able to avoid the damage by the adoption of modern methods, i.e., installation of a second wire for a return conductor instead of the earth.

Other cases involving the liability of REA Cooperatives for telephone interference have been reported in earlier issues of the REA Law Journal. McCullough County Electric Cooperative, Inc. v. Hall, 131 S.W.(2d) 1019 (Tex. Civ. App. July 12, 1939); J. W. Hale & W. I. James v. Farmers Electrical Membership Corp., 99 P.(2d) 454 (Sup. Ct. of New Mex., Feb. 15, 1940); Ill. Pipe Line Co. v. Indiana Statewide Rural Electric Membership Corporation, 24 N.E. (2d) 805 (Ind. App. 1940). In each instance the Cooperative's position was sustained. In addition there has been one case involving the question of commission jurisdiction to require an REA Cooperative to assume the expense of metallicizing single-wire telephone lines. Department of Public Utilities et al. v. McConnell, 130 S.W.(2d) 9 (Supreme Ct. of Arkansas, June 5, 1939).

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Corporations - Change in Name

Plaintiff brings a bill for specific performance to require the defendant corporation to comply with a contract for the purchase of a certain tract of land. The problem involved was whether the plaintiff was able to furnish "good and marketable title" to the property. The defect urged by defendant was that there existed an owner of record under the name "Glenwood Estates, Inc." The plaintiff replied by showing that the property had been conveyed by such corporation in the name of "The Glenwood Corporation." The plaintiff introduced evidence for the purpose of showing that the charter of the corporation in question had been amended by changing the name from "Glenwood Estates, Inc." to "The Glenwood Corporation" and that the amendment had been made pursuant to a resolution unanimously adopted by the shareholders. The only objection to the change in name was that the amendment had been adopted in a county other than the county in which the principal office of the corporation was located. Held, that specific performance should be decreed. Smith v. Hedenberg, 7 S.E.(2d) 234 (Ga. 1940).

The court holds that whether or not the meeting of shareholders was held at a proper place or not, since the resolution was concurred in by all shareholders the amendment is conclusive and not subject to collateral attack. Secondly, the court rules that the conveyance in question was valid despite the difference in the names of the corporation so long as it was clear that the same corporation was intended in both instances.

Negligence - Duty to Inspect Repair Work Done by Independent Contractor.

Action for a death resulting from electrocution. Defendant power company furnishes electricity to A's home. An electrical storm caused a stoppage in the flow of current. A complained to the company and a man was sent out who informed A that repairs were necessary and service would be disconnected until the repairs were made. A engaged an electrical contractor to make the repairs and the latter crossed wires which resulted in energizing the metal armor of a BX cable attached to the floor joist of the house. Thereafter the electricity was turned on and A's grandchild in playing came in contact with the metal and was electrocuted. The case was submitted to the jury on the plaintiff's theory that the defendant company knew or in the exercise of reasonable care should have known that the wires were crossed. Held, judgment for plaintiff on jury's verdict of $1,500, affirmed. Kiser v. Carolina Power & Light Co., 6 S.E. (2d) 713 (N.C. 1940).

The court feelsthat there is a duty of inspection here upon the defendant because of the character of the product it furnishes, namely, electricity. The court states:

"The defendant's knowledge of its service is supposedly superior to that of its customer's. It is not unreasonable, therefore, in view of the dangerous character of the product, to require the 'utmost diligence and foresight in the construction, maintenance, and inspection of its plant, wires, and appliances, consistent with the practical operation of the business.' Turner v. Asheville Power & Light Co., 167 N.C. 630, 83 S.E. 744. The care required must be commensurate with the dangers incident to the business. And so the law is written.

"The negligence of the electrical contractor was not such as to insulate the negligence of the defendant as a matter of law. The defendant's liability is predicated upon its failure to inspect its wires within a reasonable time. It knew that A was a regular user of its service. This had been interrupted, the defendant called, and with full knowledge of the facts, including the customer's desire to have the service restored immediately, the matter was allowed to go for seven days without further inquiry or attention on the part of the defendant. Under the circumstances, we think the

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question of due care was for the jury. What is due care is to be determined by the exigencies of the occasion."

Justice Barnhill dissenting:

"To hold that the defendant in this case is liable in damages for its negligent failure to thereafter inspect the wires is to hold that it was its duty to foresee: (1) That the occupant of the house would employ an electrician who would send an incompetent or careless assistant to make the repairs to the house wiring, over which the defendant had no control; (2) that such employee, instead of running the wires through the conduit provided, would install temporary wiring extending under the house to the switch; (3) that he would switch the wires at the terminal, attaching the energized wire to the neutral terminal and the ground wire to the "hot" or charged terminal, thus energizing the switch box and the BX cable; (4) then, contrary to the prevailing custom and in violation of the rules of the defendant, he would connect the house wires to defendant's line, thus charging the house wires with electricity; and (5) that the plaintiff's intestate, or some other person, would go under the house and come in contact with the energized cable. To my mind this requires a degree of prevision bordering on the omniscient and is far more than the law demands.

"The point of delivery of current by the defendant was on the outside of the house above the roof. Its wiring ended there. This is the law under the rules and regulations governing electric service adopted by the Utilities Commissioner under authority duly vested in him by statute C.S. § 1112 subsections (b) and (11).

"The wiring within the house belonged to and was under the control of the property owner. The defendant had no right, and it was not its duty, to repair or inspect the same. There is no evidence that the defendant's wires were improperly connected by the electrician to the house wires or that an inspection thereof, had it been made, would have disclosed the conditions which caused the death. It is apparent that it would not have done so, for in the final analysis, the dangerous situation was created by the improper connection of the wires at the switch box.

"If it be conceded that the act of the defendant in leaving its energized wires disconnected at the house - in a harmless condition by reason of the fact that the circuit was broken - and in its failure to inspect, constitutes negligence, it was an act of omission, negative in nature. The negligence of the electrician employed by the occupant of the house was active and constitutes the direct, proximate cause of the unfortunate and untimely death of the plaintiff's intestate. In my opinion, under no view of the evidence can it be said that the failure of the defendant to inspect its wires in any wise contributed thereto or proximately caused the same.

"Under modern conditions when buildings are constructed, provision is made for electric lighting. The wires and inci-

dental fixtures are frequently placed on the inside of brick or stone walls. In the selection or installation of the wires and fixtures the public service corporation has no part. It merely delivers current to the point of intake designated by the owner. While I fully concur in the view that a distributor of electric current should be held to a high degree of care, I feel that to adopt a rule which requires it to inspect and approve such wiring before cutting on its current places upon the public service corporation an unreasonable, and, in most instances, an impossible task."

BOOK REVIEW

COOPERATIVE CREAMERIES IN THE UNITED STATES

by

Frank Robotka and Frank Shefrin

(Series on Cooperatives, Pan American Union, Division of Agricultural Cooperation - April 1940)

The authors present statistical data covering the volume production and value of the entire butter manufacturing and of the 1,385 cooperative creameries included in the study. Total sales in 1937 for the cooperatives amounted to 322 million dollars. More than three-fourths of the cooperatives are located in Minnesota, Wisconsin and Iowa. For the year 1936 the cooperatives in these states produced 69.33%, 62.91% and 54.45% respectively of the butter produced by all creameries.

The cooperative creamery made its appearance almost simultaneously with the shift from farm buttermaking to the factory system. The first cooperative creamery was established in New York State in 1857. The mechanical cream separator and the Babcock butterfat test each in succession stimulated factory buttermaking

Cooperative, as well as private, creameries are usually classified into two groups, local creameries and centralizers. Local creameries obtain their butterfat locally and thus are located in intensely developed dairy producing areas. Centralizers concentrate butterfat from large areas by rail or by truck. In 1936 only 16 of the 1,385 cooperative creameries were in the centralizer group.

The organization structure of the cooperative creameries varies widely due to cooperative laws existing in the various states. Cooperatives incorporate under State laws but Federal acts serve as a basis to qualify for certain exemptions from "anti-trust" laws and to qualify for certain Federal Government loans.

Requirements for membership and patronage relationships vary widely. Practically all State cooperative laws require that earnings on capital and certain limited reserves exceeding 8% to 10% be prorated on a patronage basis.

Business practices particularly collection hauling vary widely in different cooperatives. The volume of business of cooperative creameries varies from below 100,000 to over 7,000,000 pounds of butter manufactured yearly.

Cooperative creameries usually market their products through the regular marketing channels. Butter sales are usually made by private negotiation to dealers and receivers at the terminal market who grade, package, and distribute the butter. In 1936, about 37% of the cooperative creameries of the United States were members of federations for marketing and other services. These agencies, in 1936 marketed 30% of all cooperative creamery production in the United States.

Cooperative creameries are usually organized because the producers in a given area feel that the margin between the market price of butter and the price received by producers for butterfat is too wide. Complaints regarding weights, tests and business ethics existing may accompany the above situation. After organization the cooperative in striving to increase the market value gives greater attention to butter quality and passes to the producer the extra margin for high quality butterfat.

The authors show by extensive comparisons of statistical material that the cooperative creamery has accomplished the purposes for which it was organized. Also that it has become a factor in the manufacture and distribution of butter from which both the producer and consumer have received many benefits.

Verane L. Gregg
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Dairy Specialist

LEGAL MEMORANDA RECENTLY RECEIVED

A-230 Effect of a clause "to transact any other business that may be brought before the meeting" in the notice of the meeting.

A-242 Legal requirements concerning audits of borrowers in all states.

A-245 Waiver of bylaw by member in membership contract.

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